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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/760,168

Applicant(s)

PERKINS ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004 and 12 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 18-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>Attached hereto</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01/16/2004</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Election/Restriction

Applicant's election with traverse of Group I, i.e., claims 1-20 in the reply filed on February 16, 2006, is acknowledged. The traversal is on the grounds that (a) "claims 1-20 and 21-36 are properly classified together", and (b) "claims 37-41 and 42-46 are properly classified together". This is not found persuasive because of the following reasons.

Applicant's contention that claims 21-36 do not "appear to be classifiable in class 312" could be true, but applicant has failed to show why the different groupings are not patentably distinct. In fact, applicant states (in the last sentence of the 1st paragraph on page 2) that claims 21-36 are provided "with the addition of slotwall panel limitations". This is the examiner's contention as to why the groups are patentably distinct and the basis of the restriction requirement. In other words, the slot track is not considered to be the same as the slotwall panel, as applicant states, and thus the claims of the panel would require a different search from that of the track. This response is also applicable to applicant's contention recited in (b) above.

The requirement is still deemed proper and is therefore made FINAL.

Further, applicant's election of sub-species ii, i.e., Figures 8 and 8A with claims 1-17 readable thereon, in the reply filed on April 12, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Thus, claims 18-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking

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claim whereby election was made **without** traverse. *Further*, claims 21-46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

It is noted that applicant's statement (at the bottom of page 2 in the response filed April 12, 2006) that "the Examiner indicated that election of one of the species would not be required since all the claims in the application are generic to Figures 28-31, 33 and 34" is acknowledged. During the telephone discussion on April 12, 2006, it was discussed how all the pending claims are drawn to the structure shown in Figures 28-31, 33, and 34. *Thus*, the examiner agrees that Figures 28-31, 33, and 34 should be grouped together. Accordingly, restriction between the species is not proper since there are no claims present which read on figures other than the species of Figures 28-31, 33, and 34. *Thus*, at this time, the requirement drawn to the different species is hereby withdrawn and hence applicant has not elected any species.

Claims 1-17 have been examined on the merits, as advanced below.

Abstract

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

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The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Claim Objections

Claim 1 is objected to because "a least one" in line 3 should be changed to --at least one--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the face" in line 4. There is insufficient antecedent basis for this limitation in the claim. *Thus*, the structural relationship between the bottom wall and the face is unclear. *In particular*, it is unclear how the bottom wall is parallel to the face.

Claim 1 is also rendered indefinite by use of the term "adjoining" as in lines 3 and 11 since it appears that the slots are not "adjoining" but rather "adjacent". Correction or clarification is requested.

Claim 1 is further rendered indefinite by the limitation "the undercut sidewall" in the last two lines of the claim since this limitation lacks proper antecedent basis in the claim. *In particular*, since a plurality of slots have been set forth in line 2 hence a plurality of undercut

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sidewalls must be present. *Thus*, it is unclear which sidewall is being referenced in the last two lines.

Claim 13 is rendered indefinite. *Firstly*, applicant improperly seeks to further define a functionally recited structure, namely the device, set forth in claim 9. *Thus*, it is unclear whether applicant is positively claiming the device and thus the metes and bounds of the claim cannot be properly ascertained. This rejection is also applicable to each of claims 14-16 (see such recitation as "attached" in claims 14 and 15 and "holes in the housing" in claim 16). *Secondly*, the recitation "extend a substantial portion of the width of the housing" in line 3, renders the claim indefinite. In particular, a device is not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element. In this case, the boundaries of the claim cannot be properly ascertained because one would not know whether their device infringed the instant claim until someone else later added a device. Accordingly, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Insomuch as the claims are best understood (in view of the Section 112, 2nd paragraph rejections advanced above), claims 1-4 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,629,076 (Amstutz et al. '076).

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Amstutz et al. '076 disclose a system comprising a slot track (12) having a plurality of slots (42) each with two undercut sidewalls that are opposite to one another (see Figure 2) wherein two adjacent slots (42) form one slat (14) whereby the slots (42) have a bottom wall (34a) that is *generally* perpendicular to the front face of the slat (14) and *generally* parallel to the top face of the slat (14); a removable bracket (see Figure 1 at 20) having a support portion (20), a first J-shaped hook (unnumbered - adjacent element 36a at the top of Figure 2) on one edge of the support portion (20) opening in a first direction to hook over an edge (36a) of the slat (14) and a second J-shaped hook (unnumbered - between numerals 42 and 16 in the middle of Figure 2) on an opposite edge of the support portion (14) opening in the first direction to hook over an edge (near 16) of the adjacent slot (42); *with respect to claim 4*, the width of the slots (42) is wider than the width of the J-shaped hooks so that the mounting bracket (20) *can be* mounted to the track (12) by inserting the hooks into the adjacent slots (42); and *with respect to claim 17*, the slots (42) and slat (14) are each generally T shaped.

Insomuch as the claims are best understood (in view of the Section 112, 2nd paragraph rejections advanced above), claims 1-3 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,944,294 (Baer '294).

Baer '294 disclose a system comprising a slot track having a plurality of slots (near 21) each with two undercut sidewalls that are opposite to one another (see Figure 3) wherein two adjacent slots form one slat (opposite 14 in Figure 3) whereby the slots have a bottom wall that is *generally* perpendicular to the front face of the slat and *generally* parallel to the top face of the slat; a removable bracket (10) having a support portion (30), a first J-shaped hook (36, 31, 46) on one edge of the support portion opening in a first direction to hook over an edge (17) of the slat

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and a second J-shaped hook (37, 50, 52) on an opposite edge of the support portion opening in the first direction to hook over an edge (see Figure 3) of the adjacent slot; and *with respect to claim 17*, the slots (42) and slot (14) are each generally T shaped.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amstutz et al. '076 as applied to claims 1-4 and 17 above, and further in view of U.S. Patent No. 5,390,462 (Kreiter '462).

Amstutz et al. '076 disclose the system as advanced above.

The claims differ from Amstutz et al. '076 in requiring: (a) each of the J-shaped hooks to have a first leg extending in a direction generally perpendicular from the support portion and a second leg extending from the distal end of the first leg in a direction generally parallel to the support portion (claim 5); and (b) the second leg of the second hook to be shorter than the second leg of the first hook (claim 6).

With respect to (a) and (b), Kreiter '462 teaches a system comprising a slot track and a bracket (141) whereby the bracket has a support portion (149) and a first J-shaped hook extending from a top end of the support portion (149) and a second J-shaped hook extending from a bottom end of the support portion (149) whereby each of the J-shaped hooks has a first

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leg (142 and 147 in Figure 14B, respectively) extending in a direction generally perpendicular from the support portion (149) and a second leg (144 and 148, respectively) extending from the distal end of the first leg (142, 147) in a direction generally parallel to the support portion (149) and the second leg (148) of the second hook being shorter than the second leg (144) of the first hook.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the bracket of Amstutz et al. '076 with hooks as taught by Kreiter '462 for increased support and stability of the bracket when attached to the slot track.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amstutz et al. '076 as applied to claims 1-4 and 17 above, and further in view of U.S. Patent No. 4,694,965 (Parnell '965).

Amstutz et al. '076 disclose the system as advanced above.

The claims differ from Amstutz et al. '076 in requiring: (a) the edges of the slot track to be finished (claim 7); and (b) the edges to be tapered (claim 8).

Parnell '965 teaches the use of a slot track having finished top and bottom edges (at 50a and 46n in Figure 2) that are tapered towards the rear surface thereby defining finished edges.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the slot track of Amstutz et al. '076 with top and bottom edges, as taught by Parnell '965, for increased aesthetic appeal.

Claims 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amstutz et al. '076, alone.

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Amstutz et al. '076 disclose the system as advanced above whereby *with respect to claim 12*, the hooks *can be* simultaneously inserted into slots without pivoting the brackets.

The claims differ from Amstutz et al. '076 in requiring: (a) two or more slot tracks with at least two brackets vertically spaced on a device (claim 9); (b) the two or more slot tracks to be spaced by a width so that more tracks can be added therebetween (claim 10); (c) the width and spacing of the tracks to be a predetermined amount (claim 11); and (d) specifics of the housing and how the brackets are attached thereto (claims 13-15).

With respect to (a), although Amstutz et al. '076 do not show the claimed configuration, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have positioned the elements as such for increased securement and stability of the device.

With respect to (b) and (c), although Amstutz et al. '076 do not show the claimed configuration, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have positioned the elements as such for increased storage capabilities and capacity.

With respect to (d), firstly, note the Section 112, 2nd paragraph rejections advanced above, and in particular, whether or not the device is being positively claims and required by the claims. *Nonetheless*, although Amstutz et al. '076 do not show the claimed configuration, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have positioned the elements as such for increased storage capabilities and capacity and for increased securement and stability of the device.

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Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer '294 as applied to claims 1-3 and 17 above, and further in view of Kreiter '462.

Baer '294 discloses the system as advanced above.

The claims differ from Baer '294 in requiring: (a) each of the J-shaped hooks to have a first leg extending in a direction generally perpendicular from the support portion and a second leg extending from the distal end of the first leg in a direction generally parallel to the support portion (claim 5); and (b) the second leg of the second hook to be shorter than the second leg of the first hook (claim 6).

With respect to (a) and (b), Kreiter '462 teaches a system as advanced above.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the bracket of Baer '294 with hooks as taught by Kreiter '462 for increased support and stability of the bracket when attached to the slot track.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer '294 as applied to claims 1-3 and 17 above, and further in view of Parnell '965.

Baer '294 discloses the system as advanced above.

The claims differ from Baer '294 in requiring: (a) the edges of the slot track to be finished (claim 7); and (b) the edges to be tapered (claim 8).

Parnell '965 teaches the use of a slot track having finished top and bottom edges (at 50a and 46n in Figure 2) that are tapered towards the rear surface thereby defining finished edges.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the slot track of Baer '294 with top and bottom edges, as taught by Parnell '965, for increased aesthetic appeal.

Claims 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baer '294, alone.

Baer '294 discloses the system as advanced above whereby *with respect to claim 12*, the hooks *can be* simultaneously inserted into slots without pivoting the brackets, and *with respect to claim 16*, the holes are oval (38) and having slots (39).

The claims differ from Baer '294 in requiring: (a) two or more slot tracks with at least two brackets vertically spaced on a device (claim 9); (b) the two or more slot tracks to be spaced by a width so that more tracks can be added therebetween (claim 10); (c) the width and spacing of the tracks to be a predetermined amount (claim 11); (d) specifics of the housing and how the brackets are attached thereto (claims 13-15); and (e) the holes to be round (claim 16).

With respect to (a), although Baer '294 does not show the claimed configuration, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have positioned the elements as such for increased securement and stability of the device.

With respect to (b) and (c), although Baer '294 does not show the claimed configuration, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner takes official notice) to have positioned the elements as such for increased storage capabilities and capacity.

With respect to (d), *firstly*, note the Section 112, 2nd paragraph rejections advanced above, and in particular, whether or not the device is being positively claims and required by the claims. *Nonetheless*, although Baer '294 does not show the claimed configuration, it would have been obvious to one of ordinary skill in the art at the time the invention was made (i.e., the examiner

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takes official notice) to have positioned the elements as such for increased storage capabilities and capacity and for increased securement and stability of the device.

With respect to (e), although the hole (38) in Baer '294 is not shown as round, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided a round hole for increased storage capabilities.

Double Patenting

U.S. Patent No. 6,811,043 has been reviewed but double patenting is not deemed to be appropriate at this time.

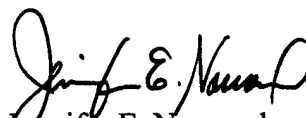
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Jennifer E. Novosad".

Jennifer E. Novosad
Primary Examiner
Art Unit 3634

May 18, 2006